

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MONTE BARTON,)	
)	No. CV-05-3018-CI
Plaintiff,)	
)	ORDER DENYING PLAINTIFF'S
v.)	MOTION TO AMEND JUDGMENT
)	
JO ANNE B. BARNHART,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
)	

BEFORE THE COURT is Plaintiff's Motion to Amend Judgment pursuant to FED. R. CIV. P. 59(e). (Ct. Rec. 23.) Attorney D. James Tree represents Plaintiff; Special Assistant United States Attorney Stephanie R. Martz represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 7.)

Plaintiff moves to amend the judgment in the captioned matter, contending the court committed a manifest error of law or fact by misapprehending Plaintiff's argument regarding the ALJ's alleged errors at phase two (failure to identify the demands of the past relevant work) and phase three (failure to compare the demands of the past relevant work with the residual functional capacity) of the step four assessment. Plaintiff further contends the court's decision also noted the ALJ's analysis was inadequate: "It is not clear whether the rejection of assembler or cannery worker contemplated work as routinely performed in the national economy

1 versus performed by Plaintiff." (Ct. Rec. 21 at 7 n.4.) Plaintiff
2 objects to the court's next comment that he did not raise an
3 argument based on the discrepancy, noting page 19 of his brief
4 referenced that specific page of the transcript. Additionally, the
5 ALJ concluded Plaintiff could perform his past work as cannery
6 worker or assembler after noting Plaintiff did not describe his past
7 work as requiring interaction with others. Plaintiff argues the ALJ
8 should not have relied on his omission, but rather had a duty to
9 obtain a precise description of the particular job duties involved,
10 including the necessary mental demands.

11 The government responds the reference in the footnote was to an
12 agency note that Plaintiff could not perform his past relevant work,
13 a worksheet developed as part of the claims process. Defendant
14 further notes a disability adjudicator's opinion on such a worksheet
15 was not vocational evidence. Moreover, it is argued, an agency
16 determination at that stage of the proceedings was not before this
17 court, as appeal lies only from the ALJ's decision. Finally,
18 Defendant concludes it is the claimant's burden to establish at step
19 four an inability to perform past relevant work.

20 At step four of the sequential process, the Commissioner
21 examines the claimant's "residual functional capacity and the
22 physical and mental demands" of the claimant's past relevant work,
23 20 C.F.R. § 404.1520(e). To find the claimant not disabled at step
24 four, the claimant must be able to perform either (1) the actual
25 functional demands and job duties of a particular past relevant job;
26 or (2) the functional demands and job duties of the occupation as
27 generally required by employers throughout the national economy.
28 *Pinto v. Massanari*, 249 F.3d 840, 844-45 (9th Cir. 2001). Although

1 the burden of proof is on the claimant at step four, the ALJ must
2 make the certain factual findings to support his conclusion. SSR
3 82-62 (1982). The critical question here is whether the ALJ was
4 permitted to rely on an omission as the basis of his conclusion:
5 Plaintiff's failure to assert his past relevant work as assembler or
6 cannery worker involved interaction with others.

7 At step four, the administrative law judge may rely on the
8 claimant's description of the duties involved in past relevant work
9 as a basis for the requisite findings. *Santiago v. Secretary of*
10 *Health & Human Servs.*, 944 F.2d 1, 5 (1st Cir. 1991). Thus, the
11 claimant has the burden of making some reasonable threshold showing
12 that he cannot return to his former employment because of an alleged
13 disability. *Pitchard v. Schweiker*, 692 F.2d 198, 201 (1st Cir.
14 1982); *Gonzalez Perez v. Secretary of Health, Education and Welfare*,
15 572 F.2d 886, 887 (1st Cir. 1978). To raise such an issue to the
16 ALJ, the

17 [C]laimant must produce relevant evidence of the physical
18 and mental demands of her prior work. *Pitchard*, 692 F.2d
19 at 201 & n.2; see also *May v. Bowen*, 663 F.Supp. 388, 394
20 (D. Me. 1987). That evidence may be testimonial or take
21 the form of an historical or subjective statements made in
22 the application or other documents provided by the agency,
23 *id.* at 393, but claimant must at least furnish some
24 minimal information about the activities that her past
25 usual work required, including those which can no longer
26 be performed. *Pelletier v. Secretary of Health, Education*
27 *and Welfare*, 525 F.2d 158, 161 (1st Cir. 1975). The
28 claimant must then describe those impairments or
limitations which she says she has, see 20 C.F.R. §
404.1512, so as to "raise the point to the Secretary", *id.*
at 161, how current functional capacity, or, as here,
capacity in the relevant period, precludes the performance
of the particular prior job. . . . In short, not only
must the claimant lay the foundation as to what activities
her former work entailed, but she must point out (unless
obvious)--so as to put in issue--how her functional
incapacity renders her unable to perform her former usual
work.

1 *Santiago*, at 5. Here, Plaintiff did not raise the issue or alert
2 the ALJ through his testimony that he was unable to perform his past
3 relevant work because it involved interaction with the public or
4 working in close proximity to others.¹ Rather, he seemed to suggest
5 it was the commitment of regular hours and simple repetitive work
6 that caused him anxiety. Accordingly,

7 **IT IS ORDERED** Plaintiff's Motion (**Ct. Rec. 23**) is **DENIED**. The
8 District Court Executive is directed to file this Order and provide
9 a copy to counsel.

10 DATED November 29, 2005.

11
12 S/ CYNTHIA IMBROGNO
13 UNITED STATES MAGISTRATE JUDGE
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26 ¹The court also notes the work, as performed in the national
27 economy and as described in the DICTIONARY OF OCCUPATIONAL TITLES,
28 involves a "not significant" ability to work with people. DICOT, §§
529.686-014, 701,687-010.